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APPLE INC.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

15 DOMINIQUE CAVALIER, and KILEY
16 KRZYZEK, individually and on behalf of all
others similarly situated,

17 Plaintiffs,

18 v.

19 APPLE INC.,

20 Defendant.

Case No. 5:25-cv-713-PCP

**APPLE INC.'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
APPLE INC.'S MOTION TO DISMISS
PLAINTIFFS' CLASS ACTION
COMPLAINT**

Date: July 10, 2025
Time: 10:00 a.m.
Dept.: Courtroom 8 – 4th Floor
Judge: Honorable P. Casey Pitts

Compl. Filed: January 21, 2025

1 Defendant Apple Inc. (“Apple”) respectfully requests that, in determining its
 2 accompanying Motion to Dismiss Plaintiffs’ Class Action Complaint (“Motion to Dismiss”), the
 3 Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the
 4 following documents attached to the accompanying Declaration of William F. Tarantino in
 5 Support of Apple’s Motion to Dismiss (“Tarantino Decl.”):

- 6 1. A true and correct copy of the article: Alyssa Wicks, Heather D. Whitehead, and
 7 Graham F. Peaslee, *Presence of Perfluorohexanoic Acid in Fluoroelastomer Watch*
 8 *Bands*, 12 ENVIRONMENTAL SCIENCE & TECHNOLOGY LETTERS 1 (Dec. 18, 2024),
 9 <https://pubs.acs.org/doi/10.1021/acs.estlett.4c00907> (the “Peaslee Paper”). (Tarantino
 10 Decl. Ex. A.)
- 11 2. A true and correct copy of the document titled “Apple’s Commitment To Phasing Out
 12 Per- And Polyfluoroalkyl Substances (PFAS),” available at
 13 [https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-](https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf)
 14 [2022.pdf](https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf) (“Apple’s PFAS Phaseout Commitment”). (Tarantino Decl. Ex. B.)

15 The Court may consider the contents of the Peaslee Paper and Apple’s PFAS Phaseout
 16 Commitment in ruling on Apple’s Motion to Dismiss under the incorporation by reference
 17 doctrine or by taking judicial notice.

18 Under the doctrine of incorporation by reference, a district court may consider documents
 19 “whose contents are alleged in a complaint and whose authenticity no party questions, but which
 20 are not physically attached to the [plaintiff’s] pleading.” *Knievel v. ESPN*, 393 F.3d 1068, 1076
 21 (9th Cir. 2005) (citation omitted). The Ninth Circuit has also extended the incorporation by
 22 reference doctrine to situations in which the plaintiff’s claim depends on the contents of a
 23 document, the defendant attaches the document to its motion to dismiss, and the parties do not
 24 dispute the authenticity of the document. *Id.*; see also *Coto Settlement v. Eisenberg*, 593 F.3d
 25 1031, 1038 (9th Cir. 2010). The purpose of this rule is to “[p]revent[] plaintiffs from surviving a
 26 Rule 12(b)(6) motion by deliberately omitting . . . documents upon which their claims are based.”
 27 *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (citation omitted).

28 A district court may take judicial notice of matters that are either (1) generally known

1 within the trial court’s territorial jurisdiction, or (2) capable of accurate and ready determination
 2 based on sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201(b).
 3 Proper subjects of judicial notice when ruling on a motion to dismiss include “publicly available”
 4 materials on accessible websites whose “existence cannot reasonably be questioned.” *Opperman*
 5 *v. Path, Inc.*, 205 F. Supp. 3d 1064, 1068 n.3 (N.D. Cal. 2016); *Terraza v. Safeway Inc.*, 241 F.
 6 Supp. 3d 1057, 1067 (N.D. Cal. 2017) (taking judicial notice of definitions of terms “which are
 7 publicly available on the [] website” and because “Plaintiff does not oppose this request or
 8 otherwise contend that the documents are inaccurate”).

9 The incorporation by reference and judicial notice doctrines apply here because Plaintiffs
 10 expressly reference and place at issue in the Complaint both the Peaslee Paper and Apple’s PFAS
 11 Phaseout Commitment. (*See* ECF No. 1 (“Compl.”) ¶ 20 (claiming the Peaslee Paper
 12 “investigat[ed] the level of PFAS in multiple smartwatch bands, including [Apple’s]”); ¶ 23
 13 (claiming “Apple was among the brands of fluoroelastomer watch band manufacturers tested” in
 14 the Peaslee Paper); ¶ 7 (quoting portions of Apple’s PFAS Phaseout Commitment).) The copies
 15 of the Peaslee Paper and Apple’s PFAS Phaseout Commitment attached to the Tarantino
 16 Declaration are authentic, true, and correct copies, and each are publicly available. (*See*
 17 Tarantino Decl. ¶ 2 (Peaslee Paper publicly available at
 18 <https://pubs.acs.org/doi/10.1021/acs.estlett.4c00907>); Tarantino Decl. ¶ 3 (Apple’s PFAS
 19 Phaseout Commitment available on Apple’s publicly available website at
 20 https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf).)

21 Courts routinely take judicial notice of scientific articles, *see Riva v. Pepsico, Inc.*, 82 F.
 22 Supp. 3d 1045, 1049 n.1 (N.D. Cal. 2015) (scientific articles that were publicly-available “from
 23 the websites of government entities and organizations that host scientific academic journal
 24 articles”); *Sidhu v. Bayer Healthcare Pharms. Inc.*, No. 22-cv-01603-BLF, 2023 WL 6541865, at
 25 *2 (N.D. Cal. Oct. 5, 2023) (publicly-available studies and FDA documents cited in complaint),
 26 and corporate websites, *see Hamilton v. Gen. Mills, Inc.*, No. 6:16-cv-382-MC, 2016 WL
 27 4060310, at *2-3 (D. Or. July 27, 2016) (documents from corporate defendant’s website);
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1 *Haskins v. Symantec Corp.*, No. 13-cv-01834-JST, 2013 WL 6234610, at *1 n.1 (N.D. Cal. Dec.
2 2, 2013) (same).

3 For the foregoing reasons, Apple respectfully requests that the Court take judicial notice
4 of Exhibits A-B to the Declaration of William F. Tarantino.

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6 Dated: April 14, 2025

MORRISON & FOERSTER LLP

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8 By: William F. Tarantino
WILLIAM F. TARANTINO

9 Attorneys for Defendant
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